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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/378,344	08/20/1999	Moshe Rock	952/29	9005

7590 11/19/2002
Timothy A. French
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Boston, MA 02110-2804

EXAMINER

SINGH, ARTI R

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 11/19/2002

15

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-15

Office Action Summary

Application No.

09/378,344

Applicant(s)

ROCK ET AL.

Examiner

Ms. Arti R. Singh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,6-8 and 23-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,6-8 and 23-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The Examiner has carefully considered Applicant's amendments and accompanying remarks filed on 03/27/02. Applicant's amendment to claims 1, 2, cancellation of claims 4, 5, 9 and 10, addition of new claims 23-29, not 28 have all been entered. The objections made to the drawings in paragraphs 2-4 of the previous office action have all been withdrawn in light of the submission of corrected formal drawings. All other previously made rejections are maintained and this action is made final.

Double Patenting

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action in paragraphs 5-8.

3. Claims 1, 2, 3, 6, 7, 8 and 23-29 are rejected under the judicially created doctrine of double patenting over claims 1, 2, 7-9, 12, 16, 18, 20, 21, 24-29 and 31 of U. S. Patent No. 5,364,678 as stated in the previously made rejection in paragraph 6 of the last office action.

4. Claims 1, 2, 3, 6, 7, 8 and 23-29 are rejected under the judicially created doctrine of double patenting over claims 1, 2, 7-9, 12, 16, 18, 20, 21, 24-29 and 31 of U. S. Patent No. 5,204,156 as stated in the previously made rejection in paragraph 7 of the last office action.

5. Claims 1, 2, 3, 6, 7, 8 and 23-29 are rejected under the judicially created doctrine of double patenting over claims 1, 2, 7-9, 12, 16, 18, 20, 21, 24-29 and 31 of U. S. Patent No. 5,268,212 as stated in the previously made rejection in paragraph 8 of the last office action.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 3, 6, 7, 8, and 23-29 are rejected under 35 U.S.C. 102(b) as anticipated by Lumb et al. (USPN 5,364,678). Lumb et al. teach a stretchable, drapable, windproof, water resistant and water vapor permeable composite fabric. The composite fabric includes an inner fabric layer, an outer fabric layer and a non-porous hydrophilic barrier layer, said outer and inner layers and an essentially hydrophilic adhesive layer joining both the inner and outer layers with the barrier. The adhesive and the barrier layers are constructed to prevent air from passing through the fabric layers while allowing water vapor to travel there through by a process of absorption-diffusion-desorption, but restrict the passage of wind and liquid water (column 2, lines 9-23). The adhesive may be continuous or discontinuous (abstract and column 4, lines 11-65, column 5, lines 1). The inner fabric layer maybe made from a variety of materials and may have a raised inner surface (column 2, lines 26-38). The barrier layer may be formed from a polyurethane (column 2, line 50 and column 4, line 32). The overall composite fabric is stretchable, windproof and water-resistant. Given that Lumb et al. meet each and every chemical and structural requirement set forth in the claims, then it must meet the property limitations of airflow recited that depend from said requirements. In other words, it is reasonable to presume that the invention of Lumb et al. would inherently anticipate the physical properties of the present invention, since both inventions are comprised of the same fabric and barrier layers. Furthermore, as no other structural or chemical features are claimed which may distinguish the present invention from that of the Lumb et al. invention, the presently claimed physical properties of airflow are deemed to be inherent to the invention of Lumb et al. The burden is upon Applicant to prove otherwise. Note *In re Fitzgerald* 205 USPQ 495. Without a showing that evidences a difference between the prior art and the present invention, anticipation is proper.

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Claim Rejections - 35 USC § 103

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action in paragraphs 11 and 12.

9. Claims 1, 2, 3, 6, 7, 8 and 23-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lumb et al (USPN 5,364,678).

Response to Arguments

10. Applicant's arguments filed 03/27/02 have been fully considered but they are not persuasive. Firstly, Applicant states that their composite is "improved", improved over what, their own products? The Claims do not recite this, nor are they in Jepson format for the Examiner to believe that they are an "improvement" over the cited art, if that is what Applicant is contending. In Applicant's second argument; that the novelty of the composite lies in the adhesive material or the adhesive/membrane combination which substantially decreases as air speed impinging on the fabric increases, the Examiner sees no difference in the structure, between that of the cited art and Applicant's invention. Chemically and physically they are the same, thus the properties exhibited by the composite would also inherently be the same, and thus the rejection made under paragraphs 9 and 10 have been amended to a 102/103 to clarify this stance. Additionally, Applicant states that the barrier layer is a hydrophilic polyurethane, how can it be non-porous yet still have wicking properties? The Double Patenting rejections are maintained, as they are still obvious variants of one another.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Arti R. Singh whose telephone number is 703-305-0291. The examiner can normally be reached on M-F 7:00am to 4:00 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-873-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Ms. Arti R. Singh
Patent Examiner
Art Unit 1771

ars
November 18, 2002



TERREL MORRIS
SUPERVISORY PATENT EXAMINER
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